

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0382 ST  
STATE GROSS RETAIL TAX  
For Years 1994, 1995, AND 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. State Gross Retail Tax – Application of public transportation exemption.**

**Authority:** IC § 6-2.5-5-27; *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 (Ind. Tax Court 2001)

Taxpayer protesting assessment of use tax on taxpayer's purchase of trucks that taxpayer predominantly used in public transportation.

**STATEMENT OF FACTS**

Taxpayer is an Indiana S Corporation, selling and transporting sand and gravel from premises where the taxpayer has the rights for extraction and from operations owned by other entities. The taxpayer also hauls salt received on consignment from another corporation or purchased by the taxpayer. The taxpayer claimed an exemption for public transportation for the trucks hauling activities -which constituted over 50% of the trucks activity- which the audit denied and is the subject of this protest.

**I. State Gross Retail Tax – Imposition**

**DISCUSSION**

The exemption at issue is governed by IC § 6-2.5-5-27; which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The application of IC § 6-2.5-5-27 was addressed in *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 (Ind. Tax Court 2001). Although this case is dissimilar insofar as it dealt with gas pipeline systems and not trucks, the public transportation exemption was the issue litigated. The Tax Court stated the following:

If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption. *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 @ 819 (Ind. Tax Court 2001)

The Tax Court has set a two-pronged test:

- (1) The taxpayer's property must be *predominately used* for providing public transportation; and,
- (2) The taxpayer must be *predominately engaged* in public transportation of the property of another. (*Emphasis added*)

Under this analysis the audit report does support taxpayer on the first prong of the test, finding the trucks in question to be predominately engaged in public transportation. However, as reported on taxpayer's returns for the years in question, there were total sales of \$3,468,293.80 by taxpayer for 1994. The total revenue related to hauling of property owned by others for that year is \$1,307,377, approximately 38% of taxpayer's business. In 1995 taxpayer had total sales of \$3,092,225.95 with \$1,161,391 of revenue related to the hauling of property owned by others, approximately 38% of taxpayer's business. In 1996 taxpayer had total sales of \$3,093,648.31 with \$1,160,736 of revenue related to the hauling of property owned by others, approximately 38% of taxpayer's business. The second prong of the test, which requires the taxpayer to be predominantly engaged in public transportation, is not satisfied for 1994 to 1996.

Consequently, taxpayer use of the trucks does not qualify for the public transportation exemption for the audit years of 1994 to 1996.

### **FINDINGS**

Taxpayer's protest is denied.